

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

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Terri A. Brennan, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

Rite Aid Corp.,

Defendant.

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No. 08-02970-JF  
(Hon. John P. Fullam)

**DEFENDANT RITE AID CORP.'S MOTION TO  
DISMISS THE SECOND AMENDED CLASS ACTION  
COMPLAINT AND TO STRIKE THE CLASS ALLEGATIONS**

Defendant Rite Aid Corp. respectfully moves this Court to dismiss Plaintiff Terri A. Brennan's Second Amended Class Action Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The grounds for the motion are that: (1) Plaintiff failed to adequately allege a claim for breach of an implied contract; (2) Plaintiff failed to adequately allege a claim for breach of contract; (3) Plaintiff failed to adequately allege a claim for breach of an implied warranty; (4) and Plaintiff failed to adequately allege a claim under any state's consumer protection laws. For these reasons, the Second Amended Class Action Complaint should be dismissed.

Defendant also moves this Court to strike the class allegations pursuant to Rule 23. The grounds for the motion are that: (1) Plaintiff's class definition is not sufficiently identifiable and requires extensive factual inquiry; (2) Plaintiff's cannot satisfy the commonality, typicality, or adequacy of representation requirements of Rule 23(a); (3) Plaintiff cannot satisfy the

requirements of Rule 23(b)(2); and (4) Plaintiff cannot show that common issues of fact and law predominate or that a class action is superior under Rule 23(b)(3). For these reasons, the class allegations in the Second Amended Class Action Complaint should be stricken.

Additional support is set forth in the accompanying memorandum, which is incorporated herein by reference.

Dated: June 2, 2009

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

/s/

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